

**NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
STATE BOARD TO REVIEW CLAIMS
Thursday, March 10, 2005 – 10:00 a.m.
1001 East Ninth Street, Reno, Nevada**

MINUTES OF MEETING *(Draft)*

I. CALL TO ORDER

Chairman Haycock called the meeting to order at 10:00 a.m. The meeting was held both in Reno, at 1001 East Ninth Street and in Las Vegas, at 3811 West Charleston Boulevard, #209. The meeting was video-conferenced between the two locations.

The Board members present were: Edgar Roberts, Mike Miller, Linda Bowman, Joanne Blystone, Mike Dzyak, Ken Tyler, Jim Najima for Leo Drozdoff, and John Haycock (Chairman).

The staff present were: Art Gravenstein, Victoria Joncas, Karen Fleming, Gil Cerruti, (Carson City Staff NDEP, Bureau of Corrective Actions), Susan Gray (Attorney General's Office), Shannon Harbour, Dawn Anderson, Sara Piper (NDEP Las Vegas), and Hayden Bridwell, (NDEP Petroleum Fund).

Guests at the Reno location included: Peter Krueger (Nevada Petroleum Marketers Convenience Store Association) and Scott Keeseey (Broadbent and Associates). Guests at the Las Vegas location included: Keith Stewart (Stewart Environment), Rob Cromwell (The Westmark Group), J. Bell (Broadbent & Associates), Keith Jay (Allsate Nevada Env.) and Rex Heppe (ATC Associates, Inc.)

II. APPROVAL OF AGENDA

Gil Cerruti announced that under Other Products, Item Number 2, a non-consent item entitled “#2004000026 Patrick Taylor: Cave Rock Country Store” was being pulled at the owner's request.

Mr. Cerruti announced that the Board members had also received Executive Summary Item A, which would be reviewed during the meeting.

Mr. Cerruti pointed out that the last item in the agenda was the workshop, which will be held in the same meeting rooms. Mr. Cerruti invited everyone to attend.

A motion to adopt the agenda with deletion of new cases, number 2, was made and seconded. Motion carried unanimously.

III. APPROVAL OF DECEMBER 9, 2004 MINUTES

A Motion was made and seconded to approve the Minutes. Motion carried unanimously.

IV. STATUS OF THE FUND STATEMENT

Mr. Cerruti presented this report. The balance forward from last fiscal year was 7.3 million dollars. Through November 2004, approximately \$412,000 has been collected for the \$100 per-tank fee, in addition to 5.1 million dollars for the petroleum fees. Since November, the December amounts have been compiled and the new fund balance is 6.1 million dollars as of the end of December in actual petroleum fees received. Interest received totaled \$64,000, which provides total revenues of approximately 14 million dollars.

The expenditures totaled 3.8 million dollars, of which 3.3 million dollars represented reimbursement of petroleum fund claims. The liabilities consist of approximately 1.1 million dollars, of which \$163,101 is a contingency of obligated claims. Mr. Cerruti stated that a list of the obligated claims had been passed out to all members. He reviewed the obligated claims list in detail. Some of these claims were approved in 2002; the claims have been approved, but not yet paid, due to lack of proof of claims. These were presented to the Board for review and for consideration in deciding if there should be an expiration date for Board authorizations.

A discussion followed regarding consideration of an expiration date. Mr. Cerruti reviewed the current approval process. Questions regarding the claims listed on the report were answered by Mr. Cerruti. It was determined that action regarding this matter could not be taken at this time. Ms. Gray commented that this may require legal regulation. She will review the matter and will provide a legal opinion.

Mr. Cerruti stated that recommendations of 1.58 million dollars were being recommended for approval. This amount includes the removal of #2004000026 Patrick Taylor: Cave Rock Country Store. Additionally, a calculation of the June 2005 Petroleum Fund balance has been completed for the purpose of notifying the Department of Motor Vehicles relative to collecting the $\frac{3}{4}$ of a cent petroleum fee in the upcoming fiscal year. The FY ending balance is projected to be 13.5 million dollars. Mr. Cerruti stated that the recommendation to DMV will be to turn off the collection of the fee on July 1, 2005. The DMV has already been notified that this will be the tentative recommendation. A final calculation will be completed in mid-May 2005 and a formal notice will be given to DMV.

A copy of S.B. 16 had also been provided to the Board for their review. Senate Bill 16 is a bill to allocate a contingency of \$500,000 of Petroleum Fund money for cleanup of petroleum-related incidences that require immediate funding. This would be followed by cost-recovery actions, and would affect the Fund balance. The \$500,000 is a yearly amount; however, the Bill does not indicate whether this is a calendar or fiscal year expenditure. It is, therefore, possible, that one million dollars could be expended during any fiscal year, unless the Bill is reworded. A discussion regarding Senate Bill 16 followed. This is a department-sponsored Bill.

V. DETERMINATION OF FUND COVERAGE

A. Resolution to Amend State Board to Review Claims Resolution 94-018

Resolution 2005-02 – This Resolution was originally a policy relating to the review of third-party claims. In this resolution was a reference to the 1991 Legislature decisions. The proposal recommends changing the Resolution to reflect the changes completed during the 1995 Legislature relative to the coverage limits from fixed deductible to a 10% Co-Payment.

Linda Bowman moved to approve the Resolution. Mike Dzyak seconded the Motion. Motion carried unanimously.

B. Resolution to Amend State Board to Review Claims Resolution 96-015

Resolution 2005-03 – Mr. Cerruti explained that this Resolution was originally passed to clarify the Petroleum Fund coverage for above-ground tanks. At that time of passage, the gallon amount was not clearly defined to reflect the lower-gallon limit of the tanks. The proposed Resolution will amend the wording to reflect this addition and will be changed to state “60 gallons and above”.

Linda Bowman moved to approve the Resolution. Joanne Blystone seconded the Motion. Motion carried unanimously.

C. Resolution to Amend State Board to Review Claims Resolution 99-01 Resolution 2005-04

– Mr. Cerruti explained that this Resolution is to correct typographical errors which appeared in the original Resolution where a comma had been omitted from a dollar amount.

Linda Bowman moved to approve the Resolution. Joanne Blystone seconded the Motion. Motion carried unanimously.

D. Statement of Proposed Regulation Changes to NAC 590 and NAC 459 –

addition of Above-Ground Marina Storage Tanks – Mr. Cerruti explained that this is a new resolution to amend NAC 590. In 2003, S.B. 58 was passed by the Legislature which broadened the scope of regulated tanks, to include above-ground tanks. As a result of this, N.R.S. 459 was amended. A copy of the amendment was included in the Resolution for the Board’s review and included NRS 459.812,

459.820, and 459.825. Because of these changes, the staff of the Petroleum Fund has proposed an amendment to NAC 590. The proposal includes marina, above-ground or over water tanks and defines inspection requirements for these tanks. Current inspection requirements are also being clarified for above-ground tanks which are enrolled in the Petroleum Fund.

Presently, only monthly inspection of above-ground tanks is required. However, what should be inspected is not clarified. Some of the amendments to NAC 590 will clarify the inspection requirements for above-ground tanks. Mr. Cerruti clarified that this is the subject of the workshop which will follow the meeting.

Mr. Cerruti began the review with NAC 590. It was stated that this Resolution will be agendized for approval by the Board after changes from the workshop and additional review have been completed.

The changes included:

- a. Under definitions, marina tanks have been added to include tanks which are at least 110 and no more than 12,000 gallons. This will exclude all parts of and the dispenser.
- b. Monthly inspection monitoring requirements are being added for above-ground tanks, in general, which are enrolled in the Petroleum Fund. The purpose is to obtain more documentation and create better leak-proof practices. Presently, the only requirement is that above-ground tanks are inspected on a monthly basis. This will be changed to add language which pertains to visually inspecting for cracks, other defects in both the tank and the secondary containment, inspection of piping, valves, and pumps. In effect, inspection of the whole system. This will be logged and be part of the records which would be available for review should Petroleum Fund coverage be applied for.

In addition, the proposed regulation refers to proposed amendments in NAC 459. Mr. Cerruti stated that the changes are indicated in red. He reviewed the requirements for above-ground marina tanks.

- c. A line has been added to request a written report when there is a release which describes the actions taken at the time there is a release to prevent a further release.

Mr. Cerruti clarified that owners of marina tanks had been notified of today's workshop. A question regarding the interest in the workshop was asked. Mr. Cerruti replied that the response has been positive and that he has spoken to two individuals regarding the workshop. In general, the requirements listed are currently being implemented with the exception of some remote leak detector sensors.

- d. A statute of limitations has been added to include non-acceptance of stale claims which are older than three years, unless good cause is demonstrated by the claimant to the Board. This is listed under NAC 590.780(1).

A question regarding the use of the International Fire Code compliance was asked. Specifically, if the regulations used were those in place at the time of the tank installation. Mike Dzyak, State Fire Marshal's Office, confirmed that the code in place at the time the facility is built are the codes used. He stated that the 2003 International Fire Code was recently adopted.

NAC 459 relates only to marina above-ground storage tanks.

VI. EQUIPMENT OWNER TRANSFER

A. Resolution to Authorize the Sale-Transfer of Equipment Ownership from The Hidden Valley Country Club Golf Course Maintenance Facility – Resolution 2005-01

Mr. Cerruti reported that this is a sale of a building to the Hidden Valley Country Club. This building was purchased by the Petroleum Fund to enclose the remediation equipment as a condition of Washoe County. The equipment is Petroleum-Fund equipment, which currently carries a cost on the books of approximately \$20,000, which includes the foundation, the building and the engineering. The remediation at the site is complete. In the past, dismantling of such buildings has been expensive. Hidden Valley Country Club Golf Course has offered to purchase the building for the amount of \$4,000.

Linda Bowman moved for approval. Joanne Blystone seconded the Motion. Motion carried unanimously.

VII. ADOPTION OF CONSENT ITEMS

These items included:

HEATING OIL

- | | | |
|----|--------------|---|
| 1. | #1999000113H | City of Fallon: City of Fallon Maintenance Yard |
| 2. | #2005000017H | Kristi Fisher: Fisher Residence |
| 3. | #2005000020H | Washoe Co. School Dist: Smithridge Elem. School |
| 4. | #2005000022H | Donna Roberts: Roberts Residence |
| 5. | #2005000023H | Steve Mihalic: Mihalic Property |

ABOVE GROUND STORAGE TANKS

- | | | |
|----|-------------|---|
| 1. | #1999000066 | Haycock Petroleum Dist: Haycock Petroleum |
| 2. | #1999000090 | Haycock Petroleum Dist: Haycock Petroleum |
| 3. | #2004000011 | William Rodriguez: Four Way Truck Stop |

NEW CASES, OTHER PRODUCTS

- | | | |
|----|-------------|---|
| 1. | #1999000229 | Mark Rosenquist: Former Bus Stop Facility |
| 2. | | Removed from the Agenda |
| 3. | #2004000035 | Seven Crown Resorts: Echo Bay Marina |
| 4. | #2005000018 | BP West Coast Products LLC: ARCO #1718 |

OLD CASES, OTHER PRODUCTS

- | | | |
|-----|-------------|---|
| 1. | #1991000039 | 7-Eleven, Inc.: 7-Eleven #29643 |
| 2. | #1991000059 | BP West Coast Products LLC: ARCO #2137 |
| 3. | #1992000014 | BP West Coast Products LLC: ARCO #6068 |
| 4. | #1992000034 | PDQ Stores, Inc.: PDQ #508 |
| 5. | #1992000062 | Allied Washoe: Allied Petroleum – Elko |
| 6. | #1992000087 | Anderson Dairy, Inc.: Anderson Dairy |
| 7. | #1992000127 | City of Las Vegas: Former Obie’s Texaco |
| 8. | #1993000010 | 7-Eleven, Inc.: 7-Eleven #20687 |
| 9. | #1993000051 | BP West Coast Products LLC: ARCO #4950 |
| 10. | #1993000100 | George Eizman: Eizman’s Service |
| 11. | #1993000102 | Rebel Oil Company: Rebel #8 |
| 12. | #1993000103 | Russell Yardley: Charlie Brown Construction |
| 13. | #1993000107 | BP West Coast Products LLC: ARCO #5310 |
| 14. | #1993000114 | Linda Hansen: Zintek Properties |
| 15. | #1993000115 | City of Fallon: Former Bootlegger Texaco |
| 16. | #1993000120 | Hidden Valley Country Club |
| 17. | #1993000126 | Cortez Gold Mines: Mill Site – Beowawe |
| 18. | #1994000003 | Allied Washoe: Allied Petroleum – Reno |
| 19. | #1994000012 | American Mart Corp: DeLuca Liquor & Wine |
| 20. | #1994000027 | 7-Eleven, Inc.: 7-Eleven #19653 |
| 21. | #1994000028 | 7-Eleven, Inc.: 7-Eleven #20084 |
| 22. | #1994000037 | Manjeet Sodhi: Gofer Market |
| 23. | #1994000065 | Avis Rent A Car Systems: Avis Rent A Car |
| 24. | #1994000067 | Peppermill Casinos, Inc.: Mesquite Truckstop |
| 25. | #1994000086 | Falconi Motors, Inc.: Falconi’s Tropicana Honda |
| 26. | #1994000120 | Conoco Phillips Company: Union 76 #3846 |
| 27. | #1994000122 | Mark Michelson: Mike’s Gas-A-Mart |
| 28. | #1994000125 | Conoco Phillips Company: Union 76 #5558 |
| 29. | #1995000022 | Conoco Phillips Company: Union 76 #4370 |
| 30. | #1995000029 | BP West Coast Products LLC: ARCO #1903 |
| 31. | #1995000039 | Al Park Petroleum, Inc.: Crescent Valley Market |
| 32. | #1995000042 | FBF, Inc.: Fayeghi Texaco |
| 33. | #1995000074 | Vera Hester: Glendale Service Facility |
| 34. | #1995000080 | Churchill Co.: Churchill Co. Road Department |
| 35. | #1995000092 | Sierra Machinery, Inc.: Sierra Machinery |
| 36. | #1995000105 | Redman Petroleum Corp.: Redman Petroleum |
| 37. | #1996000026 | Moapa Valley Credit Union: Former Russ Auto |
| 38. | #1996000034 | Marilyn Torrez: Former Mountain City Chevron |

39.	#1996000058	Bill Abdul: The Country Store
40.	#1996000063	Joan Pennahio: V & V Automotive
41.	#1996000064	Allen Esslinger: Red Rock Mini Mart
42.	#1996000101	Conoco Phillips Compay: Circle K #695
43.	#1997000061	Berry-Hinckley Industries: Berry-Hinckley #60
44.	#1997000072	Conoco Phillips Company: Union 76 #5522
45.	#1997000093	Conoco Phillips Company: Union 76 #5257
46.	#1998000014	Berry-Hinckley Industries: Berry-Hinckley #26
47.	#1998000016	Conoco Phillips Company Circle K #1366
48.	#1998000017	Brinton Investment Co.: The Mountain Store
49.	#1998000025	Washoe Co. School Dist.: Getto Transportation
50.	#1998000053	7-11, Inc.: 7-Eleven #27361
51.	#1998000068	Conoco, Inc.: Conoco #28003
52.	#1998000073	City of Reno: Reno Police Station
53.	#1998000075	Robert Dufferena: McDermitt Service & Motel
54.	#1998000080	Seven Crown Resorts: Echo Bay Resort
55.	#1999000011	Terrible Herbst Oil Co.: Terrible Herbst #133
56.	#1999000012	BP West Coast Products LLC: ARCO #5319
57.	#1999000015	Terrible Herbst Oil Co.: Terrible Herbst #144
58.	#1999000017	Reed Distributing: Reed R-Place Shell
59.	#1999000022	Terrible Herbst Oil Co.: Terrible Herbst #129
60.	#1999000029	Terrible Herbst Oil Co.: Terrible Herbst #136
61.	#1999000048	Cowan Estate: Former Lightning Lube
62.	#1999000061	Rich Sorani: Rich's Unocal
63.	#1999000086	Terrible Herbst OilCo.: Terrible Herbst #126
64.	#1999000089	Jerry Maeder: Jerry's Chevron
65.	#1999000104	Terrible Herbst Oil Co.: Terrible Herbst #118
66.	#1999000108	Steve Stremmel: Gold Ranch Casino
67.	#1999000116	Seven Crown Resorts: Echo Bay Resort
68.	#1999000117	Berry-Hinckley Industries: Berry-Hinckley #45
69.	#1999000135	Terrible Herbst Oil Co.: Terrible Herbst #106
70.	#1999000137	Terrible Herbst Oil Co.: Terrible Herbst #152
71.	#1999000145	Jerry Applehans: Gagne Coach Maintenance
72.	#1999000155	Varney Padgett: Old Washoe Station
73.	#1999000162	Terrible Herbst Oil Co.: Terrible Herbst #159
74.	#1999000167	City of Las Vegas: Fire Station #1
75.	#1999000181	BP West Coast Products LL: ARCO #5488
76.	#1999000182	Berry-Hinckley Industries: W. Mountain Oil #200
77.	#1999000186	Gloria Pilger: Former D & G Oil Facility
78.	#1999000199	Mary Ann Ferguson: Lakeshore Orbit Station
79.	#1999000204	Barry-Hinckley Industries: Trailside General Store
80.	#1999000220	7-Eleven, Inc.: 7-Eleven #22854
81.	#1999000224	BP West Coast Products LLC: ARCO #5326
82.	#1999000237	Ralph Lisle: Beatty General Store
83.	#1999000239	Jim Gomes: Callville Bay Marina
84.	#1999000242	Harjit Singh: S&S Deli & Mini Mart

85.	#1999000248	Ron Holman: Southern Wine & Spirits
86.	#1999000252	Western Energetix Corp: Winners Corner #14
87.	#1999000270	Conoco Phillips Company: Union 76 #5257
88.	#1999000273	V. K. Leavitt: The Waterhole
89.	#1999000275	Conoco Phillips Company: Circle K #1248
90.	#1999000276	Robert Harris: Pecos Station Texaco
91.	#2004000014	BP West Coast Products LLC: ARCO #437
92.	#2004000024	River City Pet: CFN-Fredrickson Tank Lines
93.	#2004000025	BP West Coast Products LLC: ARCO #1580
94.	#2004000027	BP West Coast Products LLC: ARCO #5309
95.	#2004000029	V-R Property Management: Gas-N-Save
96.	#2005000002	Carson Valley Oil Co., Inc: Carson Valley Oil

Joanne Blystone moved for approval of all consent items, with the exception of the item which was deleted on the Agenda, under new cases, item number 2. These include: Heating Oil 1-5, Above Ground Storage Tanks 1-3; New Cases, Other Products 1, 3 and 4, and Old Cases, Other Products, 1-96. Mike Dzyak seconded the Motion.

Board member Bowman abstained from Old Cases, Other Products, Number 5, Allied Washoe, Elko, Number 18, Allied Washoe-Reno cases and Number 23, Avis Rent-a-Car.

Chairman Haycock stated that he will be abstaining from above ground storage tanks numbers one and two. **Motion carried unanimously.**

VIII. EXECUTIVE SUMMARY REPORT

Mr. Cerruti reported the following information:

- a) 24 new cases have been received for fiscal year 2005;
- b) The case total since the inception of the program is 1,234. Of these, 246 are active remediation sites; 822 have been closed; 98 have been denied coverage; 42 cases have expired; and 26 cases are in pending status; and,
- c) To date, the Petroleum Fund has reimbursed approximately 110 million dollars, excluding the cases approved today.

Mr. Cerruti next reviewed the report entitled "Executive Summary A". He reviewed the documentation and explained that the Attorney General's Office has rendered a decision to provide 1099s to all unincorporated recipients of Petroleum Fund reimbursements. Mr. Cerruti provided a brief history of this matter. He explained that a formal opinion from the I.R.S. will cost approximately \$6,000. A formal decision was not requested by the State of Nevada Controller's Officer due to the cost. Mr. Cerruti requested to know if the Board desired to take action on this matter.

Board member Bowman suggested that a letter be provided to the recipients of the 1099s to clarify that the amount represents the reimbursement of funds. A discussion regarding the matter followed. It was decided that a letter will be provided. Board member Bowman also suggested that a change to the application be completed to inform claimants that a 1099 will be issued for funds received if the claimant is not a corporation.

IX. PUBLIC FORUM

A. Peter Krueger, representing the Nevada Petroleum Marketers Convenience Store Association, thanked the Board for their work relating to the Fund. Mr. Krueger spoke regarding EVR (Enhanced Vapor Recovery). The EVR process was explained. He stated that EVR requires additional areas of tightness. Both Washoe and Clark Counties require this on new tanks, and is now being requested as a modification in some areas on existing tanks. The expense of installing the new equipment is costly. Mr. Krueger stated that he was before the Board to request a reconsideration of Resolution 93-002, which was adopted by the Board in 1993. This resolution denies coverage to spills or overfills which are not eligible for the fund. The reason for this request is the cost for EVR. He stated that as the EVR modifications are completed, spills may be discovered as a result of exposing tank tops and other areas of the piping and distribution system. Mr. Krueger requested that this item be agendaized at the next meeting for consideration.

Chairman Haycock requested clarification on the type of coverage being requested. Mr. Krueger clarified that coverage is being requested for a spill or leak which is discovered in the process of completing the EVR modifications. The spill or leak would not be discovered, except for the fact that the modifications are being completed. Chairman Haycock stated that a definition and restrictions of what is being covered should be written for the Board's review. Mr. Krueger used several examples relating to spill buckets of where this situation would occur.

Mr. Krueger offered to work with staff to create the definitions required. He stated that, at this time, he is requesting that the Board consider any overfill in a tank that has been properly upgraded and meets every current requirement of the law, but there is an overspill.

X. CONFIRMATION OF NEXT BOARD MEETING

The next Board meeting will be held on June 9, 2005.

XI. ADJOURNMENT

There being no further business, the meeting adjourned at 10:55 a.m.

